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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

C.P. NO.244/2004
in
O.A. NO.1618/2001
With
C.P. NO.357/2004
in
O.A. NO.3466/2001

This the 2nd day of February, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

CP NO.244/2004 in OA NO.1618/2001

Bijender S/O Hawa Singh,
Ex-EDA of Delhi North Division,
R/O Indira Colony, Narela, Delhi-110040,
Address for service of notices C/O Shri Sant Lal, Advocate,
CAT Bar Room, New Delhi-110001.

... Applicant

(By Shri Sant Lal, Advocate)

versus

1. Shri Vijay Kumar Bhushan, .
Secretary, Ministry of Communications & I.T.,
Deptt. of Posts, Dak Bhawan, New Delhi-110001.
2. Shri Sachin Mittal,
Sr. Suptd. of Post Offices,
Delhi North Division, Delhi-110054.

... Respondents

(By Shri R.P. Aggarwal with Shri Ravinder Sharma, Advocates)

CP NO.357/2004 in OA NO.3466/2001

Surender Kumar S/O Jayanti Prasad,
Working as GDS (Pkr) in Burari P.O.
Delhi-110084 under Delhi North Postal Division,
Delhi-110054 & R/O H. No.205, Haiderpur,
Delhi-110008, address for service of notices
C/O Shri Sant Lal, Advocate, CAT Bar Boom,
New Delhi-110001.

... Applicant

(By Shri Sant Lal, Advocate)

versus



1. Shri Vijay Bhushan, Secretary,
Ministry of Communications & I.T.,
Deptt. of Posts, Dak Bhawan,
New Delhi-110001.
2. Shri Basu Dev,
Sr. Suptd. of Post Offices,
Delhi North Division, Civil Lines,
Delhi-110054.

... Respondents

(By Shri R.P. Aggarwal with Shri Ravinder Sharma, Advocates)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

C.P. No.357/2004 has been filed alleging non-compliance of Tribunal's directions contained in order dated 5.9.2002 whereby OA 3466/2001 was allowed with the following observations/directions:

"15. From the perusal of the record I find that there is admission on the part of the respondents-office that the applicant was considered for appointment to the post of EDDA and due procedure was adopted by the respondents as if the applicant is being considered for the post of regular appointment. Why subsequently the respondent No.3 has changed his mind is not clear. The respondents also admit that on their file they are still retaining the attestation form and the educational certificates and bonds which were got to be executed as if they had initiated the procedure for regular appointment. The respondents cannot be allowed to take a somersault to show that the applicant was given a provisional appointment. Though the various documents annexed to the counter do show that the applicant was given a provisional appointment but the procedure adopted by the respondents was not for provisional appointment rather the procedure followed by the respondents was for regular appointment so the respondents cannot deny a regular appointment to the applicant.

16. I, therefore, allow the OA and direct the respondent to take the applicant in service within a period of 3 months from the date of receipt of a copy of this order with all consequential benefits like seniority etc. However, the applicant shall not be given the back wages since he has not worked after he was disengaged. No costs."

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CP 244/2004 has been filed on account of non-compliance of Tribunal's directions contained in order dated 4.2.2002 whereby OA 1618/2001 was allowed with the following observations/directions:

"3. Respondents are accordingly directed to consider regularisation/absorption of applicant as EDDA or any other post to which he is eligible, in accordance with rules and instructions against an existing or future vacancy within three months from the date of receipt of a copy of this order, and while doing so, take into account the past service rendered by him.

4. Meanwhile applicant may be allowed to continue in respondents' service if the work of the nature he is doing is available with them. No costs."

2. We have proceeded to consider both these CPs together as the facts involved in these cases inter-connect them.

CP 357/2004

3. The learned counsel of applicants pointed out that vide order dated 15.10.2004 Shri Surender Kumar, applicant has been appointed as GDS Packer from 19.8.1998 without any back wages for the period of his disengagement. His seniority has been ordered to be fixed below the position of Shri Brij Pal Singh, GDS MD Ashok Vihar HPO Delhi. From the gradation list of GDS working under Delhi North Division dated 24.3.2003, the learned counsel of applicants pointed out that Shri Surender Kumar's name should be shown at Sl. No.61A, i.e., above Sunita (Sl. No.62) as while the applicant had obtained 48.1% marks, Sunita had obtained 44% marks only. Further he referred to pay certificate in respect of Shri Surender Kumar relating to the month of February, 1999 contending that Shri Surender Kumar's pay at that time was Rs.1740/-. However, respondents have fixed applicant's pay at the minimum of the scale of Rs.1220-1600. The learned counsel further stated that respondents had challenged the Tribunal's orders in the High Court of Delhi through CW No.1203/2003, which was later on withdrawn by respondents in the OA on 12.12.2003.

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9

4. The learned counsel of respondents stated that respondents have appointed Shri Surender Kumar as EDDA and issued orders regarding his pay and allowances and allowed notional re-fixation. High Court's order dated 13.11.2003 and 12.12.2003 read as follows:

"ORDER
13.11.2003

Learned counsel for the respondent has referred us to the final result of all the candidates, who were considered for the post of Extra Departmental Delivery Agent (for short EDDA). Learned counsel has pointed out that though in the said selection test the respondent had secured 48.1% marks, 4 candidates, who had secured less marks, though in the general category, were appointed on regular basis whereas the respondent was only put in the provisional list. The submission is that in view of the circular dated 22 May 1989 issued by DOPT, the respondent was to be selected in preference to the said 4 candidates.

Upon this Mr. Gangwani, learned counsel for the petitioner seeks some time to have instructions.

On the next date the petitioner shall also produce the original record wherein the representation(s) made by the respondent against his non-election were considered and also the decision to challenge the order passed by the Tribunal was taken. The petitioner shall also pay to the respondent within a week from today a sum of Rs. 2,500/- as litigation expenses.

List on 24 November 2003.

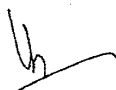
To ensure compliance a copy of this order be issued dasti to learned counsel for the petitioner under the signatures of the Court Master of this Court."

"ORDER
12.12.2003

CWP 1903/2003 & CM 1943/2003

Mr. Gangwani seeks leave to withdraw the writ petition. The writ petition and the application for interim relief are accordingly dismissed as withdrawn. Interim order dated 24 March 2003 stands vacated."

5. From the High Court's order dated 13.11.2003 it is clear that Shri Surender Kumar had obtained 48.1% marks in the selection test for the post of EDDA. High Court's order dated 12.12.2003 makes it clear that respondents had



10

withdrawn the writ petition against the Tribunal's orders. As such the Tribunal's orders dated 5.9.2002 in OA 3466/2001 become final. In the spirit of these orders, Shri Surender Kumar's appointment had to be treated as regular and not provisional and he was to be accorded consequential benefits on the basis of his appointment. As applicant had obtained 48.1% marks in the selection test, he ought to have been accorded seniority at Sl. No.61A, i.e., above Sunita who had secured 44% marks vis-à-vis Shri Surender Kumar's 48.1%. However, the date of regular appointment of applicant would be 17-7-1998 ^(X) 19.8.1998. In view of his pay being Rs.1740/- in the month of February 1999, his pay has to be re-fixed accordingly in the pay scale of Rs.1220-1600 ^{(XX) Rs.1740-2640}. As such respondents are directed to revise their orders in implementation of Tribunal's directions contained in order dated 5.9.2002 showing 19.8.1998 as the date of regular appointment of applicant and his pay has to be re-fixed taking his pay at the stage of Rs.1740/- in the scale of Rs.1220-1600 in February 1999. His pay will be brought up on notional basis and he shall not be accorded back wages. The Senior Superintendent of Post Offices, Delhi North Division, respondent No.2, who is present in person is directed to re-issue orders regarding regular appointment of Shri Surender Kumar as also the consequential benefits in terms of Tribunal's orders dated 5.9.2002 read with the present orders, within a period of two months from the date of communication of these orders, failing which applicant shall have liberty to revive this CP.

(X) Corrected as per Order dt. 02/6/2005
03/6/05
(XX) Corrected as per Order dt. 02/6/2005 in m P. 473
2004.

6. CP No.357/2004 stands disposed of in the above terms. Notices to the respondents are discharged.

CP 244/2004

7. Writ petition CW 3540/2002 & CMs 6128 & 6843/2003 filed by respondents against Tribunal's orders dated 4.2.2002 in OA No.1618/2001 was dismissed as withdrawn on 2.9.2003. Thereafter, review application No.307/2003 in the OA was also dismissed vide Tribunal's orders dated 2.4.2004. The learned counsel of applicant also referred to order dated 9.7.2004 of the Hon'ble High



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Court in WP (C) No.10621-23/2004 whereby the writ petition was dismissed and the High Court declined to interfere with the Tribunal's orders 4.2.2002. Thus, Tribunal's orders dated 4.2.2002 have become final.

8. The learned counsel of respondents pointed out that one vacancy of GDS (EDA) occurred during the period 4.2.2002 – 24.2.2004 and as such Shri Surender Kumar was appointed on 5.9.2002 against the available vacancy. The learned counsel of applicant stated that now that respondents have considered appointment of Shri Surender Kumar w.e.f. 19.8.1998, the post vacated by him on 5.9.2002 shall fall to the share of the applicant, Bijender, in OA No.1618/2001. In these facts and circumstances, on the basis of which we have directed above that Shri Surender Kumar should be appointed on a regular basis w.e.f. 19.8.1998 with specific seniority, as stated above, applicant in the present case should be considered for regularisation/absorption as EDDA or any other post to which he is eligible in accordance with rules and instructions taking into account the past service rendered by him. While applicant has been continued in terms of order dated 4.2.2002, respondent No.2, Senior Superintendent of Post Offices, is directed to consider applicant's case as above within a period of three months from the date of receipt of a copy of this order.

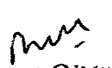
9. This CP too is disposed of with the above directions. Notices to the respondents are discharged. Applicant shall have liberty to revive the CP on remaining aggrieved.

(Shanker Raju)
Member (J)

/as/

(V. K. Majotra)
Vice-Chairman (A)

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Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi 110001